

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL C. RODGERS, *et al.*,

Plaintiffs,

v.

THE UNION PACIFIC RAILROAD
COMPANY,

Defendant.

No. C03-0092L

ORDER GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO FILE
SURREPLY AND DIRECTING
PLAINTIFF TO SUPPLEMENT THE
RECORD

This matter comes before the Court on “Plaintiff’s Motion to for Leave to File Instanter a Surreply to Defendant Pacific Union’s [sic] Motion for Summary Judgment, or in the Alternative, to Strike Arguments Raised for the First Time in Defendant’s Reply Brief.” Dkt. # 63. Although plaintiffs took a huge risk when they ignored defendant’s factual allegations regarding Mr. Rodgers’ withdrawal of his request for FMLA leave in their opposition memorandum, they are correct that defendant did not refer to or rely upon those facts in the argument section of its motion. The Court will, therefore, accept and consider “Plaintiffs’ Surreply to Defendant’s Motion for Summary Judgment with Regard to New Arguments and Evidence Raised in Defendant’s Reply Brief,” filed as Attachment A to Dkt. # 63, and the “Supplemental Declaration of Georg Kargianis in Support of Plaintiffs’ Surreply,” filed at

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1 Dkt. # 64.¹

2 Whether there is a genuine issue of material fact regarding plaintiff's withdrawal
3 of his request for FMLA leave on November 28, 2000, cannot be determined from the single
4 page of Mr. Rodgers' deposition transcript attached as Exhibit 2 to the Supplemental Declaration
5 of George Kargianis. Plaintiffs have not provided sufficient portions of the transcript to identify
6 the conversation or letter about which Mr. Rodgers is testifying.² Plaintiffs shall, within four
7 days of the date of this Order, provide additional pages of Mr. Rodgers' transcript as necessary
8 to identify these communications. No additional declarations or other forms of evidence will be
9 accepted or considered by the Court.

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11 For all of the foregoing reasons, plaintiffs' motion for leave to file a surreply is
12 GRANTED. Plaintiffs are further ORDERED to provide whatever additional pages of Mr.
13 Rodgers' transcript are necessary to identify with particularity the conversation and letter about
14 which Mr. Rodgers is testifying on page 199, Vol. II, of his deposition.

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16 DATED this 17th day of February, 2006.

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19 Robert S. Lasnik
20 United States District Judge

21
22 ¹ Whether plaintiffs' had good cause to supplement their arguments regarding the excess scrutiny
23 to which Mr. Rodgers' attendance records were subjected is doubtful but the Court will consider the
24 surreply in its entirety.

25 ² Plaintiffs' insertion of the phrase "December 4" before the word "letter" at page 3 of their
26 Surreply to Defendant's Reply Brief is unsupported.